

Texas Workforce Commission

Member of the Texas Workforce Network

Diane D. Rath, Chair
Commissioner Representing
the Public

T. P. O'Mahoney
Commissioner Representing
Labor

Ron Lehman
Commissioner Representing
Employers

Cassie Carlson Reed
Executive Director

April 8, 2003

Mr. Joseph C. Juarez
Regional Administrator, Region IV
U.S. Department of Labor
Employment and Training Administration
A. Maceo Smith Federal Building
525 Griffin St., Room 317
Dallas, Texas 75202

Dear Mr. Juarez:

On behalf of the Texas Workforce Commission, the State operational entity for the Title I Workforce Investment Act (WIA), I am respectfully requesting approval of the enclosed proposed WIA waiver for the State of Texas. The proposed waiver request was developed in accordance with WIA, Section 189(i)(4), 20 CFR 661.400 - 661.420, and the draft Training and Employment Guidance Letter referencing the development and submission guidelines for waiver requests.

The request for waiver is from the provisions of Section 129 regarding the Use of Funds for Youth Activities and Section 134 regarding Use of Funds for Employment and Training Activities.

As required, we have also included a description of the process by which notice and opportunity to comment on the proposed waiver request was provided to Local Workforce Development Boards (Boards) and other interested parties. Also enclosed are copies of all 21 comments received on the proposed waiver.

We appreciate the opportunity to submit this waiver request and look forward to receiving the Secretary's approval. We believe that this waiver will provide increased flexibility to the State of Texas and Boards in implementing reforms to our State's workforce system. This waiver is necessary for the State and Boards to continue to meet the demands of area employers for skilled workers, and the workforce needs of area residents seeking employment.

If you have any questions or require additional information please contact Luis M. Macias, Director, Workforce Development Division at (512) 936-0697 or by e-mail at luis.macias@twc.state.tx.us

Sincerely,



Cassie Carlson Reed
Executive Director

Enclosure

mc: Diane Rath, Chair and Commissioner Representing the Public
T.P. O'Mahoney, Commissioner Representing Labor
Ron Lehman, Commissioner Representing Employers
Larry E. Temple, Deputy Executive Director
Luis M. Macias, Director, Workforce Development

**STATE OF TEXAS
WAIVER REQUEST
WORKFORCE INVESTMENT ACT**

Local Activity Funds

Statutory and Regulatory Provisions to be Waived:

The Texas Workforce Commission (Commission) requests a waiver under the authority of the Secretary of Labor to waive certain requirements of Workforce Investment Act (WIA), Title I, subtitles B and E and sections 8-10 of the Wagner-Peyser Act. This authority is granted to the Secretary of Labor under Section 189 of WIA and in the implementing regulations at 20 CFR 661.420.

The Texas Workforce Commission is seeking a waiver from the provisions of Sections 129 (regarding Use of Funds for Youth Activities) and 134 (regarding Use of Funds for Employment and Training Activities) of the WIA, as well as a waiver from the provisions of 20 CFR 663.145. This waiver would allow local workforce development Boards (Boards) in Texas to use funds allocated to them under Sections 127, 128, 132 and 133 of WIA in the same manner and fashion as Statewide Activity funds are used under Sections 129 and 134 of WIA and 20 CFR 667.130, in order to meet the changing and emergent needs of Texas employers, incumbent workers, job seekers, and youth.

Purpose:

The purpose of the waiver is to gain additional flexibility for Boards in the use of WIA formula funds to meet demands of local workforce development area (local area) employers, incumbent workers, job seekers, and youth.

Waiver Request:

To meet the demands of employers, incumbent workers, job seekers, and youth, this waiver seeks additional flexibility critically needed by the Boards, by expanding the allowable uses of formula funds. This expanded use encompasses activities allowed under the uses of Statewide Activity funds authorized in WIA. The Commission is seeking a waiver that allows Boards, upon request, to use a designated portion of their formula funds for these expanded purposes. For clarity, these expanded use funds will be referred to as *Local Activity Funds*.

The Commission expects the following sequence to take place upon implementation of the approved waiver:

1. The Governor would reserve not more than 15 percent of the amount that is allotted to the State to carry out statewide Youth activities and statewide employment and training activities for Adults and Dislocated Workers.
2. The Governor would allocate WIA formula funds for services to Youth, Adults, and Dislocated Workers to the local areas.

3. Boards would analyze changing economic conditions in their areas and the demands of employers, in order to identify a need for additional flexibility.
4. Boards would submit a request, as a plan amendment to the Governor* for a portion of the area's formula funds to be designated as Local Activity Funds to be used consistent with the activities allowable under Statewide Activity funding.
5. The individual Board's plan amendment would specify a dollar amount or a certain percentage of the formula funds and the type of fund -- Youth, Adult and/or Dislocated Worker -- to be designated as local activity funds.
6. The plan amendment will also describe the project, services or activities to be delivered.
7. The plan amendment will include an assurance from the Board that all services required by the WIA will be provided.
8. The plan amendment will include an acknowledgement from the Board that all performance targets and expenditure benchmarks would be met.
9. The Governor* would evaluate the Board's plan amendment in conjunction with a review of current performance and expenditure levels.
10. The Governor* would notify Boards of approved plan amendments, and contract amendments would be initiated to reflect the additional performance expectations.

*The Governor has delegated this authority to the Commission.

Description of the individuals affected by the waiver:

This waiver will benefit employers, incumbent workers, job seekers, youth, Boards, service providers, and One-Stop center staff. Since WIA was enacted in 1998, the economy went from being very strong and robust, with employers hiring large numbers of people, to a recession that resulted in large segments of the workforce being laid off and employers drastically reducing their workforce. The flexibility of these funds authorized under this waiver would encourage Boards to increase their services and become more responsive and innovative to meet existing and new customers' needs.

Texas' situation is far different than most States due to the employment and training programs under the purview of the Commission and administered by the Boards. In addition to WIA, Temporary Assistance for Needy Families (TANF) Choices, Food Stamp Employment and Training funds and subsidized child care funds are available to serve low-income individuals. This unique situation positions Texas well to maximize the utilization of WIA for the universal population as intended. The approval of this waiver would help address the current economic downturn; as well as assist customers that do not fit statutorily defined populations under WIA. This waiver would encourage Boards to partner with more employers and labor and community organizations, to promote universal access for any individual to the One-Stop system.

Service Impact/Waiver Benefits:

To illustrate how the Local Activity Funds may be used; we offer the following scenario:

A Levi-Strauss manufacturing plant in Concho Valley makes a business decision to relocate its garment sector overseas. They do, however, make a commitment to retain all employees possible in the Call Center that they will locate in the Concho Valley area. The situation is

difficult because many of the workers in the garment sector have held their current job for 10-20 years, they are in their mid-thirties to mid-fifties, do not speak English, and have a low literacy level in their native language. These employees have an excellent work history with Levi and have a great work ethic. Their current wages are about \$15-18 per hour.

Due to their income level, they will not be income eligible for training under WIA Adult. However, the employer has made the commitment to utilize the current workers in the Call Center. The Board needs flexibility to use the funding available to provide services that will meet the needs of this employer and its current workforce. This waiver request for Local Activity Funds would provide the vehicle to offer services needed to prevent layoffs and allow these workers to transition into new types of jobs.

The services and training provided to this employer and workers would be reported in The Workforce Information System of Texas (TWIST) using a special code that would designate Local Activity Funds as the funding source. Benefits of this scenario exceed what can be reported in TWIST or on a DOL report. Not only do the employer and the workers benefit, but also the unemployment insurance trust fund is not impacted and payroll dollars remain in the local area.

Programmatic Outcomes:

Statewide Activity funds can enhance the service delivery of required WIA programs and activities at the local level. Providing additional flexibility for the use of formula funds will enable Boards to use these Local Activity Funds to tailor their programs to meet demands of local employers, and the needs of incumbent workers, job seekers, and youth, and to further reform the state's workforce system. The Commission believes the waiver is consistent with the President's proposal and represents a proactive approach to successful outcomes. These Local Activity Funds may be used to upgrade the skills of incumbent workers thus averting a layoff, serving multiple purposes. The employer benefits by avoiding the high cost of turnover and maintaining its workforce. This scenario would also minimize the negative impact on the state's unemployment insurance trust fund. Workers benefit by retaining their jobs, keeping payroll dollars in the local economy.

In some instances, service delivery is considered too bureaucratic or process-oriented, making it unattractive to our business customers as well as job seekers. Flexibility with the statutory requirements would increase utilization of One-Stops, while maintaining accountability and fiscal integrity.

Enhanced flexibility in the use of formula funds as Local Activity Funds will also create administrative efficiencies for both the Boards and the Commission by requiring fewer contract amendments and modifications to be processed. Although careful fiscal and performance management by the Commission pursuant to the waiver will continue to ensure that the Boards use funds prudently and meet performance, the additional flexibility of the waiver will allow Boards to respond more quickly and efficiently to immediate local needs.

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situation results from the statutory limitations placed on the use of formula funds under WIA. Limited to formula funded programs, Boards often lack the freedom to create innovative programs at the local level that are necessary to meet the emergent needs of employers, incumbent workers, job seekers, and youth.

WIA offers some flexibility to overcome this problem with the use of Statewide Activity funds. These funds give Boards flexibility and resources beyond those of formula funds to design customized solutions to employers, incumbent workers and job seekers. Statewide Activity funds offer an opportunity to further enhance and integrate WIA program activities and to expand existing allowable activities. The amount of Statewide Activities funds, however, is limited under the provisions of WIA. Under WIA Sections 127(b)(1)(C), 128(a), 132(b)(1)(B) and 132(b)(2)(B) and 20 CFR 667.130(b), there is a limit of up to 15 percent on the amount that may be reserved by the Governor for statewide activities. The Commission sought a waiver of the 15 percent limitation on Statewide Activity funds, but the request was denied recently because increasing the maximum statewide reservation would decrease the funds available for allocation to local areas. A waiver of the 85 percent level allocated to local areas is not allowable.

Despite, the 15 percent cap on Statewide Activity funds, in Program Year 2002/Fiscal Year 2003 the Commission was able to distribute \$10.7 million in Statewide Activity funds to local workforce development areas, allowing the Boards the greatest flexibility possible to respond to the unique workforce needs of each local workforce development area. Both the required and allowable activities of Section 134(a) of WIA will be met by either the state or the local Boards.

Texas is fully committed to the WIA concept of devising workforce solutions tailored to meet the particular needs of local and regional labor markets. In order to respond to the unique workforce needs of the 28 diverse workforce development areas in Texas, and to carry out the commitment of the state of Texas to the WIA concept of implementing innovative and comprehensive workforce systems, the Commission is requesting this waiver which, if approved, would allow Texas' local workforce development boards the flexibility they need to address employers' concerns during this period of slow economic activity.

The Commission believes this waiver request aligns with the President's Fiscal Year (FY) 2004 budget proposal to create a single consolidated Adult services grant, because that proposal gives States much greater discretion over the use of those funds. The budget proposal also ties to the Administration's newly announced approach for WIA Reauthorization to build on and improve what works in WIA.

Legal Argument:

Congress has clearly recognized the need for the Secretary of Labor to have as much flexibility as possible in order to assist the States in accomplishing the goals of WIA. Section 189(i)(4) of WIA allows for general waivers of statutory or regulatory requirements by the Secretary. Section 189(i)(4)(C) states the Secretary shall provide a waiver if it is determined that the requirements requested to be waived impede the ability of the State or local area to implement their plans.

The purpose of the general statutory and regulatory waiver authority is to provide flexibility to States and local areas and to enhance their ability to improve the statewide workforce investment system. The Secretary's waiver authority provides a vehicle to assist States and local areas in situations in which the regulations impede their ability to implement and continue development of a cohesive delivery system.

Waivers may be requested and granted to address impediments to the implementation of a strategic plan, as stated in 189(i)(4)(C), including the continuous improvement strategy, consistent with the key reform principles of WIA.

These key reform principles include the following:

1. Streamlining services and information to participants through a One-Stop delivery system;
2. Empowering individuals to obtain needed services and information to enhance their employment opportunities;
3. Ensuring universal access to core employment-related services;
4. Increasing accountability of States, localities and training providers for performance outcomes;
5. Establishing a stronger role for Local Boards and the private sector;
6. Providing increased State and local flexibility to implement innovative and comprehensive workforce investment systems; and
7. Improving youth programs through services that emphasize academic and occupational learning.

The Commission, in submitting this request for waiver, recognizes the statutory exceptions to the Secretary's authority to approve waivers. The Commission, therefore, is submitting a request for a waiver that does not violate or affect any requirements or provisions of WIA and its related Federal regulations. By requesting a waiver of the use requirements for formula funds under WIA, allocation of funds to local areas will not be affected.

Under this waiver request, allocation of funds to local areas will still follow the provisions described in Sections 128 and 133 of WIA. The Governor will still reserve not more than 15 percent each of the amounts allotted to the State for the statewide activity fund, leaving the remainder of the funds to be allocated by formula to each of the 28 local areas. After the allocation process is complete, under this waiver request, a Board having a need for additional flexibility would then under the guidelines established by the waiver, request to use a portion of its formula funds as Local Activity Funds.

Eligibility of providers or participants will not be affected by the approval of this waiver. The definition of eligibility under WIA is contained in Section 101 of the Act. Under Sections 129 and 134 of WIA, formula funds are required to be used for eligible providers and participants under the Act. Under the waiver being requested, the formula funds determined by a Board to be needed for other services would be used in a manner consistent with Statewide Activity funds. Those funds which would be used, as Local Activity Funds would serve participants who are eligible for Statewide Activity funds. In addition, under this request for waiver, the requirements and provisions set forth by WIA, including performance standards, pertaining to the core,

intensive, and training services will remain the same and would have to be met by the Board that is seeking the Local Activity Funds designation. Approval of this request for waiver will foster the creation of new and/or improved employment and training activities in the local areas that will benefit all customers, including employers, incumbent workers, job seekers, and youth.

Texas' request for waiver would allow the Secretary to waive the use of funds provisions under Sections 129 and 134 of WIA and would allow the funds allocated to the local areas under Sections 128 and 133 of WIA, to be used not only in the manner prescribed under the statute, but also as Local Activity Funds in the same manner and fashion as Statewide Activity funds under Sections 129 and 134 of WIA. Under the waiver requested by the Commission, both required and allowable Statewide Activities would be permissible uses for a certain amount of the formula funds allocated to the local areas. These would include, but are not limited to, the required activities of:

1. Providing rapid response activities;
2. Assisting in the establishment and operation of One-Stop delivery systems; and
3. Operating a fiscal and management accountability information system.

Allowable activities under this waiver would include, but are not limited to:

1. Conducting research and demonstrations;
2. Establishing and implementing:
 - (a) Innovative incumbent worker training programs; and
 - (b) Programs targeted to Empowerment Zones and Enterprise Communities;
3. Implementing innovative programs for displaced homemakers, and programs to increase the number of individuals trained for and placed in non-traditional employment; and
4. Carrying out youth activities.

The Commission has a strong commitment to the State's responsibility to carry out the required Statewide Activities. The Commission will continue to perform the State level activities, such as disseminating the Eligible Training Provider List, providing incentive grants to local areas, and preparing and submitting the annual performance report.

Goals to be achieved by the Waiver:

- Improve the ability of Boards to appropriately and quickly respond to employers, incumbent workers, job seekers, and youth;
- Increase local control for program delivery by encouraging locally designed service delivery plans that support unforeseen economic changes;
- Increase accountability at the state, local and service provider levels; and
- Provide greater flexibility to Boards in designing and implementing WIA programs.

How those goals relate to the Strategic Plan goals:

Texas' workforce system goals are:

1. A dynamic, integrated and ever improving, business-driven workforce development system where employers and individuals have ready access to a network of information and services responsive to their unique workforce and employment needs.
2. Texas workers have access to obtain the literacy, education and workplace skills necessary for self-sufficient employment, employment advancement and lifelong learning.
3. Texas workers have the educational and occupational skills for employment advancement in meaningful, challenging and productive higher-skilled, higher-wage careers and the educational foundation for lifelong learning.
4. Texas youth are empowered with the knowledge, skills and behaviors necessary for employment and economic independence in higher-skilled, higher-wage careers and lifelong learning.

The Governor established these statewide goals, objectives and system performance measures for the delivery of quality programs that promote the coordination of employment and training activities at the state and local levels. These goals, objectives, and system performance measures establish common outcome objectives to drive concerted planning and coordinating efforts among state agencies, local education training, employment and support service providers.

Texas prides itself on being among the leaders in WIA implementation. In relation to our goals, the limitation or lack of flexibility on the use of formula funds impedes our ability to streamline services, eliminating duplicative and unnecessary procedures, and implement an integrated plan for service delivery and to be successful in obtaining the State's goals. The goals to be achieved by this waiver would enhance the State's ability to accomplish its workforce system goals.

Texas is seeking opportunities to further integrate the One-Stop delivery system. Enhanced flexibility improves the ability to respond quickly and effectively to the changing needs of the new economy. Restraints placed upon formula funds weaken the local Boards' ability to develop innovative ways to serve businesses and individuals with urgent workforce needs. By eliminating these restraints, the state's entire workforce system would become more dynamic and flexible while maintaining and continuing to enhance service delivery to customers.

Describe the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers:

There are no state or local statutory or regulatory barriers to implementing the requested waiver. In fact, the structure of the Texas Workforce network as envisioned by the Texas Legislature is designed to remove as many statutory or regulatory barriers to the creation and maintenance of a seamless workforce system. Commission regulations and policy statements are in compliance with current federal law. Upon notification of the approval of this waiver request, Commission rules and policies will be amended to comply with the terms of the waiver.

Describes the processes used to monitor the progress in implementing the waiver:

The Commission has a monitoring and performance accountability system that measures results for employers and other customers using the Texas Workforce network. The Commission continuously analyzes performance reports and compares actual performance with contract targets. The Commission will continue to make adjustments to monitoring performance requirements to ensure that performance goals and objectives are met for WIA services, including those programs created through the use of this waiver. The Commission will monitor progress under this waiver by reviewing monthly expenditure and performance reports submitted by Boards, through regularly scheduled conference calls with Board executive directors, and through its monitoring and performance accountability system.

Provide notice to any Board affected by the waiver:

Notice to Boards would occur via working with the Boards through the Workforce Leadership of Texas, which assists the Boards in working with the Commission in its development of policy, by issuance of Workforce Development Letter(s), as well as through provision of training and/or technical assistance. These steps would be taken prior to the effective date of the waiver implementation.

Provide any Boards affected by the waiver an opportunity to comment on the request:

This proposed waiver was discussed at a Texas Workforce Commission public meeting on March 18, 2003. The proposed waiver was posted to the Commission's Web site on March 18, 2003. It was published in the *Texas Register* for a 7-day review and comment period beginning on March 28 and ending April 4, 2003.

In addition, the waiver was discussed during the Commission's biweekly conference call with the Boards' Executive Directors. Each Board Executive Director was provided notice of the proposed waiver via e-mail. In addition, the Board Executive Directors and Chairs were provided written notice of the proposed waiver by letter.

Ensure meaningful public comment, including comment by business and organized labor, on the waiver:

Over 1000 letters were mailed the week prior to publication in the *Texas Register* to all Chief Elected Officials, Texas Council on Workforce and Economic Competitiveness Board members, and a number of industry associations, labor organizations, and State agencies. This waiver was published in the *Texas Register* for a 7-day review and comment period. In addition, notice of this waiver request was provided to each Board member representing the private sector, organized labor, and community-based organizations.